



SCHOOL OF LAW

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Dear Ms. Achim:

Thank you for providing us with the opportunity to visit the Jack Harwell Detention Center ("Harwell Detention Center") in Waco, Texas on April 2, 2014. We hope that the visit will promote open lines of communication between the management of the facility, Immigration and Customs Enforcement ("ICE") and advocates and legal services providers.

Our interest in the Harwell Detention Center stems from a history of concerns about the facility. It has widely been reported in the news that McLennan County built the jail in 2010, to be run by a private prison company, with the expectation that contracts from the federal government would fill extra bed space and make the facility profitable. As such, there were strong incentives for the county and the private facility management company to seek contracts with ICE whether or not the facility was appropriate for immigration detention. The facility never fit well with the 2009 immigration detention reform goals of moving away from a "decentralized, jail-oriented approach to a system wholly designed for and based on ICE's civil detention authorities" and ending reliance on "capacity in penal institutions." The Harwell Detention Center has not always even been in compliance with the standards for penal facilities. The Texas Commission on Jail Standards found multiple non-compliance issues in 2012.¹

In addition, the Immigration Clinic at the University of Texas School of Law learned of a number of problems experienced by women immigration detainees transferred to the facility in the fall of 2011. At the time, there was no functioning telephone system for detainees to make calls to legal services providers, and we experienced difficulties communicating with clients detained at the facility. We also received complaints about lack of medical care and inadequate food. One lawful permanent resident detainee fell from her bunk bed shortly after being sent to the facility. She suffered a serious injury but did not receive immediate medical treatment. We understand that ICE stopped detaining women at the Harwell Detention Center due to the problems encountered at the facility.

¹ See Texas Commission on Jail Standards, Jail Inspection Reports for the Harwell Detention Center, http://www.tcjs.state.tx.us/docs/JackHarwellDetCtrSpecial_NC_12-29-2011.pdf; http://www.tcjs.state.tx.us/docs/JackHarwellDetCtr_NC_2-7-2012.pdf

Through this letter, we raise concerns about the Harwell Detention Center once again. Before outlining our concerns, we note that non-profit organizations and immigration lawyers should not be tasked with responsibility to monitor conditions at immigration detention facilities and to call ICE's attention to deficiencies. Instead, ICE must independently review contract facilities, like the Harwell Detention Center, to ensure that each facility meets the applicable standards. If any facility is unable to comply with the standards, ICE should ensure that immigrants are not detained there. In the case of the Harwell Detention Center, it does not appear that ICE officials adequately considered the situation at the facility before renewing assignment of immigration detainees there. In fact, a troubling compliance inspection report, issued by the Office of Detention Oversight at the end of 2012, indicated that ICE management had not visited the facility in a year and that ICE did not keep proper records regarding communications with detainees housed there.²

With this background, we raise the following issues based on our visit to the Harwell Detention Center. First, the facility is very clearly a penal institution. It is a medium security facility constructed by the local government to house individuals in the criminal justice system. In fact, half of the facility houses inmates in the criminal justice system. Among other indicators of the penal nature of the facility, the detainees wear uniforms and are restricted in their movement and face regular population counts. According to ICE's own proclamations, this penal environment is not appropriate for the immigration detainees currently being held there, the majority of whom have recently crossed the border and have no criminal history at all.³

Second, during our visit, we learned that the men detained at the Harwell Detention Center do not have access to the credible fear or reasonable fear processes sufficient to ensure that they are not removed without consideration of a potential asylum or withholding of removal claim. Under 8 CFR 235.3 and 8 CFR 208.31, an individual in expedited removal or reinstatement of removal proceedings must be granted access to a credible fear interview ("CFI") or reasonable fear interview ("RFI") upon expressing a fear of returning to the country of removal during any point in the removal process. We learned that CFI and RFI interviews are not conducted at the Harwell Detention Center. Detainees at the facility had little to no knowledge of their right to seek a CFI or RFI. Nor was there any information available to the detainees about the procedure to follow to seek such an interview. A generalized form for communication with ICE was made available, but detainees did not appear to know that the form could be used to request CFI and RFI interviews. It was also not clear how frequently ICE officials checked the communications forms. There is no regular ICE staff on duty at the facility, as there is at the Hutto Detention Center or the South Texas Detention Center, to ensure that communications regarding a fear of return can be made. Of the men that we interviewed, several expressed a fear of return and an interest in pursuing asylum or other protections against persecution. However, just one detainee had received notification that he would be transferred out of the facility and granted a CFI, only after his attorney intervened. The information about lack of access to the CFI and RFI processes that we received during the visit confirmed complaints that we had received previously. We are attaching one such complaint that was filed with the DHS Office of Civil Rights and Civil Liberties. Thus, the procedure for ensuring access to the CFI and RFI processes at the Harwell Detention Center is deficient.

² ICE, Office of Detention Oversight Compliance Inspection: Enforcement and Removal Operations, San Antonio Field Office, Jack Harwell Detention Center (Nov. 2012), <http://www.ice.gov/doclib/foia/odo-compliance-inspections/jack-harwell-detention-Nov27-29-2012.pdf>

³ ICE, Immigration Detention Overview and Recommendations (Oct. 2009); ICE Fact Sheet: 2009 Immigration Detention Reforms, <http://www.ice.gov/news/library/factsheets/reform-2009reform.htm>

Third, we emphasize that the facility must, at a minimum, comply with the National Detention Standards (NDS) that apply to the facility, although ICE has made clear that it is preferable for facilities to comply with the 2011 Performance Based National Detention Standards. The applicable standards are not met.

The facility does not offer adequate access to legal materials. The lack of a formal legal orientation program, coupled with the distance of the facility to non-profit legal service organizations, makes detainee access to legal information particularly crucial.⁴ Under the National Detention Standards, a facility holding immigration detainees “shall permit detainees access to a law library, and provide legal materials, facilities, equipment and document copying privileges.” None of the detainees whom we interviewed during our visit to the Harwell Detention Center knew that the legal library existed. In addition, the library materials were altogether inadequate, sparse and outdated. For example, the Immigration Law and Crimes treatise was the 2008 edition. The numerous changes in immigration law, procedure, remedies and jurisprudence, of course, are not reflected in this outdated version. The State Department Human Rights reports available in the library dated from 2005, although current country conditions materials are crucial for any immigrant seeking asylum, withholding of removal or relief under the Convention Against Torture.⁵ The Florence Project’s Know Your Rights materials, providing an invaluable resource for pro se immigrants, were not in the library even though these materials are easily accessible, <http://www.firrp.org/resources/prose/>, and available at most immigration detention centers. While we are happy to suggest additional materials, ICE has the responsibility to ensure that the law library complies with the detention standards.

Telephone access at the facility is also problematic. Telephone access to pro bono legal services is paramount, particularly given the lack of ICE presence at the Harwell Detention Center and the distance of the facility from most legal services providers. The National Detention Standards require that detainees have reasonable access to telephones, that detainees be allowed to make direct calls to legal counsel and, specifically, that detainees be permitted to call legal counsel on the list of free legal service providers “at no charge to the detainee or the receiving party.” The rules regarding telephone access are also to be posted where detainees can easily see them and included in a detainee handbook. At the Harwell Detention Center, the posted information about free legal service providers does not inform detainees that they may call legal services providers for free. Instead, the instructions for free calls are in a separate binder, which was not readily accessible. We also had difficulty following the instructions to make a successful call. We did not review the detainee handbook and so do not know whether the required information is included, but it did not appear that detainees had received written information about use of the telephones for free calls. You indicated to us that the information posted in the pods would be updated and would include information about free calls, and we hope that change has already occurred. However, additional steps would be necessary to ensure meaningful access to free telephone calls to legal services providers.

Recreation possibilities at the Harwell Detention Center also appear to be inadequate. The National Detention Standards require detention facilities to offer “recreational programs and activities” and specifically mandate outdoor recreation wherever possible. The Harwell Detention Center staff

⁴ The Baylor University Law school clinic is unable to counsel, much less represent, the large number of detainees at the facility and the government has not funded a legal orientation program at the Harwell Detention Center.

⁵ Although most of the men detained at the Harwell Detention Center have final orders of removal, they still may request a credible fear interview or a reasonable fear interview, depending on the circumstances, in order to seek asylum, withholding of removal or protection under the Convention Against Torture.

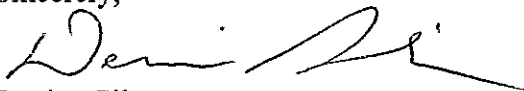
highlighted that movies were shown at the facility as a form of entertainment. However, we were very surprised to learn from the interviewees at the Harwell Detention Center that the first time any of them had seen a movie was the day of our tour. Furthermore, we viewed the recreation rooms offered to the detainees at the Harwell Detention Center. These indoor rooms do not allow for outdoor recreation under the terms of the National Detention Standards.⁶

The uniforms issued at the facility also led to complaints by detainees. The National Detention Standards require that clean uniforms be issued upon entry into the facility and also mandate regular exchanges of uniforms. However, one detainee told us that although he had previously requested a clean uniform several times, he was only furnished one a few days before our tour. Others told us that the uniforms caused itching and rashes.

Finally, we are concerned about the format for non-attorney visitation. The National Detention Standards encourage visitation by family and friends and require establishment of a "visiting room" that is "appropriately furnished and arranged, and as comfortable and pleasant as practicable." The rules also require that information be made available regarding visitation schedules and requirements. However, our understanding is that non-legal visitation at the Harwell Detention Center takes place over video camera. The facility is not listed on the ICE website of detention facilities and, consequently, no information is made available to family and friends of immigration detainees regarding visitation. This visitation protocol is unacceptable.

Given the seriousness of the problems with the Harwell Detention Center, we urge you to discontinue placement of immigration detainees at the facility. We understand that most of the immigration detainees currently held at the facility have final orders of removal and are subject to mandatory detention under INA 241(a)(2). However, ICE must detain these individuals at facilities that meet the detention standards and are otherwise appropriate for immigration detention. To the extent that the Harwell Detention Center is utilized when other facilities are full, ICE should consider releasing individuals in other facilities, who are not a danger to the community or a flight risk and who are not mandatorily detained, in order to ensure that there is sufficient room in adequate detention facilities for the individuals currently detained at the Harwell Detention Center. We look forward to hearing from you at your earliest convenience.

Sincerely,



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⁶ The standards provide: "If a facility does not have an outdoor area, a large recreation room with exercise equipment and access to sunlight will be provided. (This does not meet the requirement for outdoor recreation)."

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